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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 422 Miscellaneous

TALBOT JENNINGS,

Petitioner,

vs.

FREMONT NESTER, EDWARD PIOTTER, LARRY VODVARKA, JOHN S. BOYLE, JAMES A. BROWN, AND JOHN PHILLIPS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The opinion of the United States Court of Appeals for the Seventh Circuit has not been officially reported and for that reason a copy of the opinion is attached to this brief as Appendix "A".

JURISDICTIONAL STATEMENT.

The petitioner relies upon Sections 1257 and 2101 of Title 28, U. S. C., and Part V, Rule B-19, of the Rules of the Supreme Court of the United States to review by certiorari the decision of the United States Court of Appeals.

CONTESTED ISSUES.

1. Should State's Attorneys, while acting within matters committed by law to their control and supervision, be subject to actions for damages which would follow every conviction or failure to convict or should they have the same immunity as is extended to judges?

2. Did the complaint allege facts which stated a cause of action for deprivation of due process or equal protection within the meaning of the Civil Rights Acts?

STATEMENT OF THE CASE.

The complaint is predicated on four alleged conspiracies entered into between various defendants on different dates. The gist of the charges are:

(1) On June 5, 1948, the defendants, Raymond Hutchinson, Fremont Nester and Edward Piotter of the Oak Park police force and Fred Myles of the Chicago Police Department, *conspired and agreed that they would arrest and search plaintiff without a warrant and unlawfully seize plaintiff's property and did seize and carry away a gold ring, revolver, watch and papers of plaintiff.*

(2) On June 5, 1948, the defendants, Raymond Hutchinson, Fremont Nester and Edward Piotter, *carried out the terms of the conspiracy by forcing said plaintiff to make confessions by force and coercion.*

(3) On July 6, 1948 and thereafter, the defendants,

Raymond Hutchinson, Fremont Nester and Edward Piotter, and John S. Boyle, State's Attorney of Cook County, and James A. Brown and John Phillips, Assistant State's Attorneys, acting under color of state law, regulation, custom or usage, *confederated, conspired and agreed to use perjured testimony and certain confessions obtained from the plaintiff in* order to obtain a denial of a motion filed by plaintiff through his counsel in the Criminal Court of Cook County to suppress illegally seized personal property which the aforesaid defendants intended to use against said plaintiff in the criminal prosecution.

(4) The defendants, Raymond Hutchinson, Fremont Nester and Edward Piotter, and John S. Boyle, State's Attorney of Cook County, and James A. Brown and John Phillips, Assistant State's Attorneys, while acting under color of state law, regulation, custom and usage, combined, confederated, conspired and agreed to further violate and abridge the constitutional rights of the plaintiff by withholding evidence which would have been beneficial to the plaintiff and by dilatory and oppressive delays in the trial which resulted in the plaintiff losing several witnesses.

The defendant, John S. Boyle, is made a party defendant because the complaint alleges that he was State's Attorney on the 6th day of July, 1948, and thereafter. The defendant, James A. Brown, is made a party defendant because he was an Assistant State's Attorney on the 6th day of July, 1948, and thereafter. The defendant, John Phillips, is made a party defendant because he was an Assistant State's Attorney on the 6th day of July, 1948. They are charged with having done acts in their official capacity.

Plaintiff asks for judgment of $50,000.00 compensatory damages, and judgment of $50,000.00 punitive damages, against each of said defendants.

The defendants filed a motion to strike the complaint on the ground that it did not state a cause of action. The motion was sustained and the cause dismissed. The Court of Appeals (7th Circuit) affirmed: *Jennings* v. *Nester, et al.*, Opinion #11234. (See Appendix A, pp. 17-20, *infra.*)

ARGUMENT.

I.

State's Attorneys When Acting in Their Official Capacities Are Immune From Civil Suits.

In *Alzua* v. *Johnson*, 231 U. S. 105, 58 L. Ed. 142, involving an action against a state court judge, this Court said:

> "* * * we regard it as fundamental that the immunity of the defendant from this suit is the same as that of judges in the United States, which is established beyond dispute. *Bradley* v. *Fisher*, 13 Wall. 335, 20 L. Ed. 646; *Randall* v. *Brigham*, 7 Wall. 523, 19 L. Ed. 285."

The reason for this rule of immunity is set forth in *Bradley* v. *Fisher*, 13 Wall. 335, 20 L. Ed. 646, at 649:

> "For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. * * * Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their

> motives cannot in this way be the subject of judicial inquiry. * * * If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. Few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the acts which would be essential to the maintenance of the action."

State's Attorneys in Illinois are judicial officers. Sec. 22, Art. VI, Illinois Constitution of 1870.

In *Laughlin* v. *Rosenman*, 163 F. 2d 838, involving a prosecuting attorney charged with conspiring with others to procure plaintiffs' indictment on false testimony, the court held that the rule of immunity from civil liability of a public officer applied to a charge of violation of the Civil Rights Act and affirmed a judgment dismissing the complaint of the plaintiff upon the ground that it failed to state a claim upon which relief could be granted.

In *Lyons* v. *Baker* (5th Cir.), 180 F. 2d 893, which involved members of a grand jury, it was held that a complaint alleging that the grand jury made false and malicious charges against plaintiff in violation of his civil rights, was properly dismissed on motion.

The State's Attorney and the Assistant State's Attorneys named as defendants herein, were at the times complained of judicial officers of the State of Illinois, and, as such, were protected by the same rule of immunity which is applicable to judges.

Francis v. *Crafts* (1st Cir.), 203 F. 2d 809, in reiterating the immunity of judges from civil liability, distinguishes *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, which is relied on by plaintiff in the case at bar. To the same effect